

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALVIN TEMPLE,
Plaintiff,

v.

CITY OF SANTA CLARA POLICE
DEPARTMENT, et al.,
Defendants.

Case No.18-cv-04526-NC

**ORDER SCREENING
AMENDED COMPLAINT
UNDER 28 U.S.C. § 1915(E)(2)(B)**

Re: Dkt. No. 12

Pro se plaintiff Calvin Temple proceeds in forma pauperis in this civil action. *See* Dkt. Nos. 2, 5. On October 5, 2018, the Court screened Temple's amended complaint and dismissed it with leave to amend because Temple did not allege sufficient facts. *See* Dkt. No. 10. With leave, Temple filed an amended complaint. Dkt. No. 12.

In accordance with the Court's October 5, 2018, order, Temple's amended complaint now details Defendants' allegedly unlawful seizure of his green card and Social Security card. Temple alleges that after his criminal jury trial ended in August 2017, the presiding Santa Clara County Superior Court judge ordered that all of his property be returned. *See* Compl. ¶ 15–16. Three days after the conclusion of his trial, Temple went to the City of Santa Clara police station with the court order. *Id.* ¶ 16. The clerk returned most of Temple's property, but did not return his green card and Social Security card. *Id.* On advice of his defense counsel, Temple filed a claim for his property with the County at

1 the main jail, but the County has not responded. *Id.* ¶ 17. These factual allegations
2 support a plausible claim for the unlawful seizure of property.

3 However, as to defendant deputy district attorney Michael Gadeberg, Temple still
4 has not stated a claim. Gadeberg was the prosecutor in Temple's criminal case. *Id.* ¶¶ 4,
5 15. Temple has alleged no facts tying Gadeberg to the continued unlawful seizure of his
6 property. Accordingly, the Court finds that service on Gadeberg is not warranted because
7 Temple failed to state a claim against him.

8 Thus, the Court FINDS that Temple's amended complaint states a plausible claim
9 for relief against defendants City of Santa Clara, the City of Santa Clara Police Department
10 ("SCPD"), and Nick Richards in his official capacity such that service is warranted. This
11 finding is without prejudice to the defendants filing a motion to dismiss. The Court
12 ORDERS the U.S. Marshals Service to serve the City of Santa Clara, SCPD, and Richards
13 with a summons and copy of the amended complaint.

14 All parties are directed to indicate whether they consent or decline the jurisdiction
15 of a U.S. Magistrate Judge under 28 U.S.C. § 636(c). Any party is free to withhold
16 consent without adverse consequences. A consent/declination form is attached.

17 Although he has stated a claim for relief, the Court notes that Temple may be better
18 served by attempting to contact the Social Security Administration or the United States
19 Citizenship and Immigration Services to obtain a replacement Social Security card or
20 green card. To that end, the Court directs Temple to the Federal Pro Se Program, who may
21 be able to assist him with the process of obtaining replacement cards. The Federal Pro Se
22 Program is located in Room 2070 of the San Jose United States Courthouse, and is
23 available by appointment Monday to Thursday 9:00 a.m.–4:00 p.m. The Program can be
24 reached by calling (408) 297-1480.

25 **IT IS SO ORDERED.**

26
27 Dated: November 16, 2018

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NATHANAEL M. COUSINS
United States Magistrate Judge